THE HON'BLE SRI JUSTICE G.BIKSHAPATHY

AND

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION NOs.17791, 17569 and 17795 of 2001

COMMON ORDER: (per G.B. J.,)

Since a common question of fact and law arise in all these three Writ Petitions and the challenge is also made to the common order passed by the learned A.P. Administrative Tribunal (for short Tribunal) in O.A.Nos.1572 of 1995 and 3743 of 1996, dated 27.3.2001, they are being disposed of by a common order.

2. The applicants before the Tribunal challenged the selections of women candidates in a recruitment held by the A.P. Public Service Commission (for short Commission) in 1990 for Group-II(A) posts. The Notification was made on 1-8-1990 and ultimately final selection took place on 15.3.1995. Two applicants in O.A.Nos.1572 of 1995 and 3743 of 1996 have challenged the selections on the ground that the women candidates at the relevant time were having only preferential right for appointment but they did not have any statutory right of reservation, and though these two applicants secured highest marks than the women candidates, they were not appointed, but women candidates were appointed on the premise that they are entitled for reservation. Though the third candidate, who is the applicant in O.A.No.1854 of 1999, approached the Tribunal for similar relief, the Tribunal having found that there are laches on his part, directed the respondents to consider the case of this applicant also for appointment to any existing vacant post in Group-II(A) services if the applicant had obtained more marks in his category than any of the women candidates selected and appointed with reference to the notification issued by the Commission in the year 1990. The Tribunal after considering the matter held that the women candidates have a preferential right, they cannot claim any right of 30% reservation in the absence of any statutory rule as on the date when the notification

was issued, and therefore directed the authorities to consider the case of the applicants in O.A.Nos.1572 of 1995 and 3743 of 1996. Against the said order of the Tribunal, these three Writ Petitions have been filed.

W.P.Nos.17569 and 17795 of 2001

3. The issue that arises for consideration is whether the order passed by the Tribunal is sustainable in law.

4. Admittedly the selections were conducted on the premise that the women candidates have a statutory reservation, but, however, as on the date the administrative instructions were in force, presuming that there was reservation, the appointments were made by the Government giving 30% positive reservation to the women candidates even though they secured lesser marks than the petitioners in O.A.Nos.1572 of 1995 and 3743 of 1996, the Tribunal held that such a reservation is unwarranted and consequently disposed of the matter, which is as follows:

> "….Therefore, by an amendment issued in G.O.Ms.No.928, GAD, dated 6.10.1995 the rights which the applicants had acquired prior to the amendment cannot be taken away and, therefore, non-selection and appointment of the applicants to the posts included in Group-II(A) services based on the notification issued in the year 1990 when women candidates with lesser marks were selected and appointed would be violative of Articles 14 and 16 of the Constitution of India. Therefore, the applicants are entitled for consideration of their cases for appointment to the posts included in Group-II(A) services notified in the year 1990 as per their merit in their category with reference to their preference".

5. The learned counsel for the Commission submits that the order of the Tribunal is wholly illegal and contrary to law and therefore the same is liable to be set aside. On the other hand the learned counsel for the applicants submits that the order is quite legal and valid and the same cannot be assailed.

6. The only issue that arises for consideration is whether giving preference to the women candidates, who secured lesser marks, would offend Articles 14 and 16 of the Constitution of India.

7. It was clearly brought out by record that the petitioners in these two Writ Petitions have got higher marks than the women candidates and as on the date when the notification was made, there was no statutory reservation for women. However, the reservations were made statutorily at a later date giving retrospective effect, but the Tribunal held that by virtue of Explanation to sub-rule (2) of the Amended Rule, vide G.O.Ms.No.928, GAD, dated 6.10.1995, the appointments already made would not be disturbed, but they will not have any retrospective effect of the rule on the appointments already made. Therefore we are faced with a situation where the appointments already given to the women candidates cannot be disturbed and at the same the petitioners in these two Writ Petitions are required to be considered for the appointment to the post on the basis of the marks obtained by them in preference to the women candidates. The order of the Tribunal holding that the women candidates cannot be given a statutory right of preferential treatment in the absence of any statutory provisions cannot be said to be illegal and contrary to law. The preference is only prescribed, as observed by the Supreme Court that when the women candidates and male candidates stand on the equal footing, in such eventuality preference only would be given to the women candidates, but when they are less meritorious, they cannot be appointed on the ground of their entitlement. Thus, we are in agreement with the order of the Tribunal in this respect.

8 . Accordingly, W.P.Nos.17569 and 17795 of 2001 filed by the Commission against the orders passed in O.A.Nos.1572 of 1995 and 3743 of 1996 are dismissed. No costs.

W.P.No.1854 of 1999

9. Coming to this Writ Petition, which is filed against the order passed in O.A.No.1854 of 1999, the Tribunal observed that there were laches on the part of the unofficial respondent. But having observed so, the Tribunal yet granted relief to the unofficial respondent, directing the authorities to consider his case, which reads thus—

> "The respondents are directed to consider the case of the

applicant for appointment to any existing vacant post in Group-II(A) services if the applicant had obtained more marks in his category than any of the women candidates selected and appointed with reference to the notification issued by the Commission in the year 1990. The above exercise should be completed within a period of 4 months from the date of receipt of this order".

10. The learned Standing Counsel for the Commission submits that when the laches are writ at large, the Tribunal ought not to have given any relief to the unofficial respondent as it would unsettle the settled situation. On the other hand the learned counsel for the unofficial respondent submits that when the matter is pending before the Tribunal at the instance of some other candidates, it is always open for the unofficial respondent to seek such a relief before the Tribunal. Even though he challenges the action at a belated stage, yet he cannot be denied the relief.

11. We are afraid we cannot accept the contention raised by the learned counsel for the unofficial respondent. The reliefs claimed before the Tribunal were individual reliefs, and in such a case unless the individual is vigilant he cannot get a relief basing on the claims made by other similarly situate persons. Under those circumstances, we are of the view that since the applicant in O.A.No.1854 of 1999 approaching the Tribunal is at a belated stage, it ought to have dismissed the O.A. on the ground of clear and unexplained laches on the part of the applicant therein.

12. In view of the above, Writ Petition No.17791 of 2001 filed by the Commission is allowed setting aside the orders passed by the Tribunal in O.A.No.1854 of 1999. No costs.

(G.BIKSHAPATHY, J.,

1st September, 2003.

(GOPALA KRISHNA TAMADA, J.,)

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Copy in one week.

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